

## Article - Tax - General

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§10–912.

(a) (1) In this section the following words have the meanings indicated.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, “net proceeds” means the total sales price paid to the transferor less:

1. debts of the transferor secured by a mortgage or other lien on the property being transferred that are being paid upon the sale or exchange of the property; and

2. other expenses of the transferor arising out of the sale or exchange of the property and disclosed on a settlement statement prepared in connection with the sale or exchange of the property, not including adjustments in favor of the transferee.

(ii) “Net proceeds” does not include adjustments in favor of the transferor that are disclosed on a settlement statement prepared in connection with the sale or exchange of the property.

(3) “Nonresident entity” means an entity that:

(i) is not formed under the laws of the State; and

(ii) is not qualified by or registered with the Department of Assessments and Taxation to do business in the State.

(4) “Resident entity” means an entity that:

(i) is formed under the laws of the State; or

(ii) is formed under the laws of another state and is qualified by or registered with the Department of Assessments and Taxation to do business in the State.

(5) “Total payment” means the net proceeds of a sale actually paid to a transferor, including the fair market value of any property transferred to the transferor.

(6) “Transfer pursuant to a deed in lieu of foreclosure” includes:

(i) a transfer by the owner of the property to:

1. with respect to a deed in lieu of foreclosure of a mortgage, the mortgagee, the assignee of the mortgage, or any designee or nominee of the mortgagee or assignee of the mortgage;

2. with respect to a deed in lieu of foreclosure of a deed of trust, the holder of the debt or other obligation secured by the deed of trust or any designee, nominee, or assignee of the holder of the debt or other obligation secured by the deed of trust;

3. with respect to a deed in lieu of foreclosure of any other lien instrument, the holder of the debt or other obligation secured by the lien instrument or any designee, nominee, or assignee of the holder of the debt secured by the lien instrument; and

(ii) a transfer by any of the persons described in item (i) of this paragraph to a subsequent purchaser for value.

(7) “Transfer pursuant to a foreclosure of a mortgage, deed of trust, or other lien instrument” includes:

(i) with respect to the foreclosure of a mortgage:

1. a transfer by the mortgagee, the assignee of the mortgage, the attorney named in the mortgage, or the attorney or trustee conducting a foreclosure sale pursuant to the mortgage to:

A. the mortgagee or the assignee of the mortgage;

B. any designee, nominee, or assignee of the mortgagee or assignee of the mortgage; or

C. any purchaser, substituted purchaser, or assignee of any purchaser or substituted purchaser of the foreclosed property; and

2. a transfer by any of the persons described in item 1 of this item to a subsequent purchaser for value;

(ii) with respect to the foreclosure of a deed of trust:

1. a transfer by the trustees, successor trustees, substituted trustees under the deed of trust, or trustees conducting a foreclosure sale pursuant to the deed of trust to:

A. the holder of the debt or other obligation secured by the deed of trust;

B. any designee, nominee, or assignee of the holder of the debt secured by the deed of trust; or

C. any purchaser, substituted purchaser, or assignee of any purchaser or substituted purchaser of the foreclosed property; and

2. a transfer by any of the persons described in item 1 of this item to a subsequent purchaser for value; and

(iii) with respect to the foreclosure of any other lien instrument:

1. a transfer by the party authorized to make the sale to:

A. the holder of the debt or other obligation secured by the lien instrument;

B. any designee, nominee, or assignee of the holder of the debt secured by the lien instrument; or

C. any purchaser, substituted purchaser, or assignee of any purchaser or substituted purchaser of the foreclosed property; and

2. a transfer by any of the persons described in item 1 of this item to a subsequent purchaser for value.

(b) (1) For every deed or other instrument of writing that effects a change of ownership on the assessment books under the Tax – Property Article and for which a payment is required under subsection (c) of this section, the total payment shall be described on the form that the Comptroller specifies by regulation.

(2) The form required under paragraph (1) of this subsection shall be signed under oath by:

(i) the transferor of the property;

(ii) an agent of the transferor; or

(iii) the real property reporting person, as defined under § 6045 of the Internal Revenue Code.

(c) Except as otherwise provided in this section, in a sale or exchange of real property and associated tangible personal property owned by a nonresident or nonresident entity, the deed or other instrument of writing that effects a change of ownership on the assessment books under the Tax – Property Article may not be recorded with the clerk of the circuit court for a county or filed with the Department of Assessments and Taxation unless payment is made to the clerk of the circuit court for a county or the Department of Assessments and Taxation in an amount equal to:

(1) the sum of the rate of the tax imposed under § 10–106.1 of this title and the top marginal State income tax rate for individuals under § 10–105(a) of this title, applied to the total payment to a nonresident; or

(2) the rate of the tax for a corporation under § 10–105(b) of this title of the total payment to a nonresident entity.

(d) Subsection (c) of this section does not apply when:

(1) a certification under penalties of perjury that the transferor is a resident of the State or is a resident entity is provided by each transferor in:

(i) the recitals or the acknowledgment of the deed or other instrument of writing transferring the property to the transferee; or

(ii) an affidavit signed by the transferor or by an agent of the transferor that accompanies and is recorded with the deed or other instrument of writing transferring the property;

(2) the transferor presents to the clerk of the circuit court for a county or the Department of Assessments and Taxation a certificate issued by the Comptroller stating that:

(i) no tax is due from that transferor in connection with that sale or exchange of property;

(ii) a reduced amount of tax is due from that transferor in connection with that sale or exchange of property and stating the reduced amount that should be collected by the clerk of the circuit court for a county or the Department of Assessments and Taxation before recordation or filing; or

(iii) the transferor has satisfied the transferor's tax liability described in subsection (c) of this section or has provided adequate security to cover such liability;

(3) the property transfer is:

(i) a transfer pursuant to a foreclosure of a mortgage, deed of trust, or other lien instrument; or

(ii) a transfer pursuant to a deed in lieu of foreclosure;

(4) the property is transferred by the United States, the State, or a unit or political subdivision of the State;

(5) a certification under penalties of perjury that the property being transferred is the transferor's principal residence is provided by each transferor in:

(i) the recitals or the acknowledgment of the deed or other instrument of writing transferring the property to the transferee; or

(ii) an affidavit signed by the transferor or by an agent of the transferor that accompanies and is recorded with the deed or other instrument of writing transferring the property; or

(6) the property is transferred pursuant to a deed or other instrument of writing that includes a statement of consideration required by § 12-104 of the Tax – Property Article indicating that the consideration payable is zero.

(e) (1) Except as provided in this section, the amounts described in subsection (c) of this section shall be collected by the clerk of the circuit court for a county or the Department of Assessments and Taxation when the deed or other instrument of writing is presented for recordation or filing.

(2) Within 30 business days after the date the amount payable under subsection (c) of this section is paid, the clerk of the circuit court for the county or the Department of Assessments and Taxation shall pay over to the Comptroller the amount collected under subsection (c) of this section as prescribed by the Comptroller.

(f) (1) Amounts collected under subsection (c) of this section and paid over to the Comptroller under subsection (e) of this section shall be deemed to have been paid to the Comptroller on behalf of the transferor from whom the amounts were withheld.

(2) The transferor shall be credited with having paid the amounts for the taxable year in which the transaction that is the subject of the tax occurred.

(g) The transferee, title insurance producer, title insurer, settlement agent, closing attorney, lending institution, and real estate agent or broker in any transaction subject to this section are not liable for any amounts required to be collected and paid over to the Comptroller under this section.

(h) This section does not:

(1) impose any tax on a transferor or affect any liability of the transferor for any tax; or

(2) prohibit the Comptroller from collecting any taxes due from a transferor in any other manner authorized by law.

(i) (1) The Comptroller shall adopt regulations to administer this section.

(2) The Comptroller's regulations shall establish procedures for the issuance of the certificate referred to in subsection (d)(2) of this section.

(3) The Comptroller's regulations shall establish a procedure by which a transferor may apply for an early refund of the tax collected under this section if the transferor establishes that no tax will be owed or less tax than collected will be owed.

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